

REMARKS

The present Response is being submitted in connection with the Official Action mailed August 22, 2007 and the Interview Summary mailed October 29, 2007. The following sets forth Applicants' remarks with regard to the allowability of the currently pending claims.

As an initial matter, Applicants respectfully thank the Examiner now examining the present case, Examiner Michael Priddy, for conducting the telephone interview of October 23, 2007 with Applicants' counsel, Kevin M. Kocun. In that discussion, Mr. Kocun pointed out that the previous rejections set forth by the previous Examiner handling the matter were improper, and that the claims, most notably independent claims 71 and 81 were therefore allowable. As is evidenced by the Examiner's Interview Summary of October 29, 2007, an agreement was reached regarding this during the telephone interview.

Applicants note that a subsequent telephone discussion with Examiner Priddy was conducted on November 2, 2007. Examiner Priddy indicated in that discussion that he would prefer a written response be submitted in the matter in addition to the Interview Summary Record. Thus, this response is being submitted.

In the outstanding Action, which was issued by the previous Examiner examining the matter, claims 81, 83, 85-89, 91, and 95 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,110,172 to Jackson ("Jackson") and claims 71-79, 82, 92-94 and 98-106 were rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Jackson and U.S. Patent No. 5,360,431 to Puno et al. ("Puno"). Most important among these rejections are the anticipatory rejections of independent claim 81 in view of Jackson and the obviousness rejections of independent claim 71 in view of Jackson and Puno. In the aforementioned telephone interview, it was conveyed to

Examiner Priddy that Applicants believe that neither of these was proper. In particular, it was pointed out to the Examiner that Jackson fails to teach a locking cap including a first portion and a second portion, the first portion of the locking cap having opposed arcuate engagement flanges receivable in the arcuate engagement slots of the head portion, the second portion of the locking cap having an elongate recess engageable with the exterior surfaces spinal rod, the first and second portions of the locking cap being mechanically joined for rotation relative to one another, wherein the first portion of the locking cap is located above the second portion of the locking cap as the locking cap moves from the unlocked position to the locked position. Furthermore, it was pointed out to the Examiner that even the combination of Jackson and Puno did not teach such a construction. As is evidenced by the October 29th Interview Summary, the Examiner agreed that Jackson does not teach the limitations of independent claim 81, and that the combination of Jackson and Puno does not teach the limitations of independent claim 71. Thus, Applicants respectfully assert that such claims constitute allowable subject matter.

In addition, Examiner Priddy did mention in the November 2, 2007 telephone discussion two prior art references that he was going to further consider in light of the currently pending claims, namely, U.S. Patent Application Publication No. 2002/0007183 to Lee et al. ("Lee") and U.S. Patent No. 6,585,737 to Baccelli ("Baccelli"). Applicants take this opportunity to inform the current Examiner that both of these references were previously cited in the present matter. Specifically, Lee was cited by the previous Examiner in an Official Action dated August 28, 2006, and Baccelli was cited in an IDS submitted by Applicants on May 15, 2006. As such, Applicants respectfully submit that such references have been previously considered and specifically note that the claims have never been rejected in

view of such references. Thus, Applicants respectfully submit that now issuing rejections in view of such references would be improper.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. Although each of the dependent claims is not specifically discussed herein, Applicants respectfully submit that such claims are allowable based solely upon their dependence from one of allowable independent claim 71 or independent claim 81, as well as for the additional features in such claims which are not present in the prior art. Therefore, Applicants respectfully request a Notice of Allowance be issued in connection with this matter.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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